

**REMARKS**

New claims 12-15 are added. Hence, claims 1-15 are all the claims pending in the application. Claims 1-11 are amended.

Applicant amends the specification as required by the Examiner and it is respectfully submitted that the objection to the specification is obviated. No new matter is introduced.

Claims 1-6 are rejected under 35 U.S.C. § 102(b) as being anticipated by US 5,349,329 to Smith. It is respectfully submitted that the claims, amended here, are not anticipated by Smith.

Smith is concerned with an anti-theft device for a vehicle to prevent “car jackings,” and discloses a transmitter carried by the driver and a receiver installed in the vehicle. See Abstract. Once the device is armed, if the receiver fails to detect the signal broadcast by the transmitter, the vehicle is disabled and cannot be operated. Smith describes disabling the vehicle when the transmitter is separated from the vehicle such as during a car-jacking by “displacing the operator out of the vehicle and removing the vehicle away from the vicinity of the operator.” See col. 12, lines 30-33.

Claim 1 is amended to recite “detecting a qualified person marker held by a driver having a driving qualification appropriate for driving the vehicle only when the qualified person marker is held opposite the marker detector.” Since Smith does not disclose or even suggest detecting the transmitter only when it is held opposite to the receiver, Smith does not anticipate claim 1.

Claims 1, 2 and 7 are rejected under 35 U.S.C. § 102(b) as being anticipated by GB 2 395 331 to Thorpe. Claim 1 is amended and Applicant respectfully submits that Thorpe does not disclose all the limitations of claim 1.

Thorpe is directed to a vehicle control system that detects the location of a user of the vehicle and controls the operation of the vehicle based on the user's location. See Abstract. Thorpe discloses a plurality of transceivers 108a and 108b disposed at various locations in the vehicle, as shown in Fig. 1. Thorpe discloses that a driver carries a tag 104a. When the tag (104a) is in range of a transceiver unit (108a, 108b), it emits a signature signal (152) received by one or more of the transceivers. See page 8, lines 16-20. Signal characteristics of the signature signal, such as amplitude, frequency and phase, are passed to a transceiver control unit (110) which interprets the signal characteristics and generates a location signal (160). The location signal is indicative of the location of the detected tag. See page 8, line 30 through page 9, line 2. Thorpe also discloses a seat pressure pad (120) that detects when someone is sitting in the driver's seat. See page 10, lines 26 - 27. Based on the location signal and the seat pressure signal, the control unit can detect unsafe and insecure situations and activate appropriate actuators. Such actuators can include an ignition lock and/or a warning system. See page 10, lines 27-33.

However, Thorpe does not disclose the feature recited in claim 1 of detecting "a qualified person marker held by a driver having a driving qualification appropriate for driving the vehicle only when the qualified person marker is held opposite the marker detector." Thorpe does not disclose or even suggest holding the driver's tag opposite a transceiver unit, but rather merely discloses that the "transceiver control unit (110) detects the presence of one of the tags (104a, 104b) in the driver compartment (109a)..." See page 9, lines 6-7 and Fig. 2. Accordingly, Thorpe, for at least these reasons, does not anticipate claim 1 or the claims that depend from claim 1.

Claims 8 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dortenzio. Applicant respectfully traverses the rejection because it would not have been obvious to have placed the portable unit disclosed by Dortenzio in an operator's shoe.

Claim 8 is directed to an apparatus for preventing an unqualified person from driving a vehicle. The claim expressly recites a marker detector that detects "a qualified person marker provided in a shoe worn by a driver...."

Dortenzio discloses an automotive security device that consists of a portable unit and a central unit. See Abstract and col. 3, lines 30-35. The central unit is mounted in a vehicle (see Abstract) and the portable unit is carried by the vehicle operator (see col. 4, lines 25-27). Dortenzio discloses that the vehicle's operator, to energize the portable unit, must operate a switch on the portable unit. See col. 4, lines 27-29 ("When the operator approaches the vehicle, the operator energizes the portable unit by placing switch S1 to the momentary position then releasing it to the on position."). If the energized portable unit is within range of the central unit, the automotive electrical system is allowed to function properly. See col. 4, lines 35-42.

In the Office Action it is admitted that Dortenzio does not disclose the claim limitation of a qualified person marker being "provided in a shoe worn by a driver," as recited in claim 8. However, in the Office Action it is asserted that it would have been obvious to "insert Dortenzio's transmitter in a shoe (or other personal item) worn by the driver." See page 7 of the Office Action. The Examiner states that the motivation for modifying the teachings of Dortenzio as such is "to have the transmitter attach[ed] to a personal item of the driver, particularly the shoe of the driver, for ease of transport (Dortenzio column 5 line 10-11), also to reduce the

possibilities of losing the transmitter, and to place the receiver near the driver, namely the cab.”

See page. 7 of the Office Action.

It is respectfully submitted that modifying the teachings of Dortenzio as urged in the Office Action, to place Dortenzio’s portable unit in an operator’s shoe would not have been obvious to a person of ordinary skill in the art. First, the Office Action appears to assert that it would have been just as obvious to try placing the portable unit in an operator’s shoe as in any other article of the operator’s clothing. However, “obvious to try” is not the standard for obviousness, and hence, the asserted motivation does not meet the standard for establishing a *prima facie* case of obviousness.

Second, placing the portable unit in an operator’s shoe would frustrate the purpose of Dortenzio and fundamentally change its principle of operation. Dortenzio describes an operator energizing the portable unit by placing the switch S1 on the portable unit in a momentary position then releasing it to the on position. However, placing the switch S1 in an operator’s shoe would make the portable unit less accessible to the operator and difficult, if not impossible, to operate the switch. Accordingly, a person of ordinary skill in the art would not have modified the teachings of Dortenzio to place the portable unit in an operator’s shoe.

Since claim 10 contains by reference all the limitations of claim 8, it is respectfully submitted that claim 10 is not rendered unpatentable by Dortenzio for at least the same reasons.

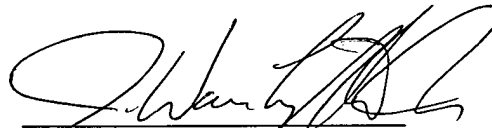
Claims 9 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dortenzio in view of Smith. Applicant respectfully traverses the rejection since Smith does not cure the deficiencies of Dortenzio discussed above with respect to claim 8.

New claims 12 - 15 are added. Claim 12 specifies that the marker is placed in a driver's shoe, as shown, for example, in Fig. 3 and described in the paragraph at the bottom of page 6 and in the first full paragraph of page 9. New claims 13 - 15 are directed to the qualified person marker 11 shown in Fig. 2 and described at least at pages 9 and 10 of the specification.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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